

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARK F. DURBIN,

Plaintiff,

v.

STATE OF WASHINGTON, ET AL.,

Defendant.

CASE NO. 2:22-cv-0200-JHC

ORDER GRANTING MOTION TO  
DISMISS

Defendants Daniel T. Satterberg and King County (including its entities King County Sheriff's Office, King County Superior Court, and King County Jail), move to dismiss this action for lack of proper service and additional reasons. Having reviewed the materials filed in support of and opposition to the motion, the Court GRANTS the motion.

The Federal Rules of Civil Procedure require service of a complaint within 90 days after filing the complaint. Fed. R. Civ. P. 4(m). Plaintiff filed his amended complaint on March 21, 2022. Dkt. 9.

Defendant Satterberg

Rule 4(e)(2) requires Plaintiff to serve individual defendants, like Satterberg, by

(A) delivering a copy of the summons and of the complaint to the individual personally;

1 (B) leaving a copy of each at the individual's dwelling or usual place of abode with  
 2 someone of suitable age and discretion who resides there; or

3 (C) delivering a copy of each to an agent authorized by appointment or by law to  
 4 receive service of process.

5 Fed. R. Civ. P. 4(e)(2). Rule 4(e)(1) also allows service by "following state law for serving a  
 6 summons . . . in the state where the district court is located or where service is made." Fed. R.  
 7 Civ. P. 4(e)(1). Washington law requires Plaintiff to serve Defendants "personally, or by leaving  
 8 a copy of the summons at the house of [their] usual abode with some person of suitable age and  
 9 discretion then resident therein." Wash. Rev. Code (RCW) 4.28.080(16). Washington law also  
 10 provides for service by mail "where the person cannot with reasonable diligence be served  
 11 [personally] as described." RCW 4.28.080(17).

12 Defendant Satterberg has submitted a declaration dated June 21, 2022, in which he states  
 13 that Plaintiff did not serve him individually or through an authorized agent. Dkt. # 36 at 2. In  
 14 response, Plaintiff submits certified mail receipts for mail sent to Satterberg, but does not show  
 15 that he could not, with reasonable diligence, personally serve Satterberg. Dkt. # 42 at 11.

#### 16 Defendant King County

17 Rule 4(j)(2) requires Plaintiff to serve "[a] state, a municipal corporation, or any other  
 18 state-created governmental organization" by "(A) delivering a copy of the summons and of the  
 19 complaint to its chief executive officer; or (B) serving a copy of each in the manner prescribed  
 20 by that state's law for serving a summons or like process on such a defendant." Fed. R. Civ.  
 21 P. 4(j)(2). Washington law requires that, if an action is against a county, service must be by  
 22 delivery "to the county auditor or, during normal office hours, to the deputy auditor, or in the  
 23 case of a charter county, summons may be served upon the agent, if any, designated by the  
 24 legislative authority." RCW 4.28.080(1). Plaintiff argues that he served Defendant King County

1 by serving the auditor. But he presents no proof of delivery. Instead, he declares that he sent the  
2 materials via certified mail. Dkt. # 23..

3 Plaintiff submits no proof that he properly served Defendants Satterberg and King  
4 County within 90 days after the filing of the amended complaint. Nor does he argue that there  
5 was good cause for that failure. *See* Fed. R. Civ. P. 4(m). Nor does he seek an extension of the  
6 deadline. Accordingly, the Court DISMISSES the claims against Defendants Satterberg and  
7 King County without prejudice.

8 Dated this 13th day of October, 2022.

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11 John H. Chun  
12 United States District Judge  
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